

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 22, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 96-2827-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**BARRY BARTLE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Rock County: JAMES E. WELKER, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Barry Bartle appeals from a judgment of conviction for interfering with the custody of a child and for violating a restraining order, and from an order denying postconviction relief. The issues are whether the trial court erroneously exercised its discretion because it: (1) admitted other acts

evidence; (2) denied Bartle's motions for a mistrial and for postconviction relief predicated on the admission of the other acts evidence; and (3) inquired about Bartle's sentence credit before it imposed sentence, in alleged violation of *State v. Walker*, 117 Wis.2d 579, 586, 345 N.W.2d 413, 416 (1984). We conclude that the trial court properly exercised its discretion because it: (1) admitted the other acts evidence to show Bartle's knowledge that his conduct was unlawful; (2) properly denied Bartle's related motions for a mistrial and for postconviction relief; and (3) did not violate *Walker* when it imposed sentence. Therefore, we affirm.

Bartle was charged with interfering with the custody of a child, contrary to § 948.31(1)(b), STATS., and for violating a restraining order, contrary to § 813.125(7), STATS. Bartle allegedly helped his girlfriend abduct her four-year-old daughter, in violation of a custody order which awarded primary physical placement of the child with the child's father. Bartle was also charged with violating a restraining order which prohibited him from having any contact with the child's father and his wife. A jury found Bartle guilty of both charges and the trial court imposed a ten-year sentence on the interference conviction, and a ninety-day concurrent sentence on the restraining order conviction.

The evidence which Bartle contends should have been excluded as other acts evidence under § 904.04(2), STATS., was from a social worker who testified that she conducted an investigation and recommended that Bartle have no contact with the child. She also testified that Bartle was in court for the entire hearing which resulted in that no-contact order.

Bartle moved to strike the social worker's testimony as "irrelevant, inflammatory, and prejudicial .... It's other bad acts evidence coming in through the back door." The trial court denied Bartle's motion and ruled that this

testimony was relevant to rebut Bartle's defense of ignorance of the order which he allegedly violated. Bartle unsuccessfully moved for a mistrial and for postconviction relief on this same ground. He raises these same issues on appeal.

Section 904.04(2), STATS., provides that:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

“[Once the trial] court determines that evidence is admissible under § 904.04(2), it must next determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice under § 904.03, STATS.” *State v. Plymesser*, 172 Wis.2d 583, 592, 493 N.W.2d 367, 372 (1992). We review rulings on other acts evidence to determine whether the trial court properly exercised its discretion. *See, e.g., State v. Peters*, 192 Wis.2d 674, 695, 534 N.W.2d 867, 875 (1995).

Bartle claimed that the social worker's investigation and the no-contact order impugned his credibility and suggested to the jury that he had been a child abuser. The trial court disagreed. The trial court summarized the social worker's trial testimony and determined that it was relevant and not unfairly prejudicial. The court reasoned that the fact that the social worker conducted an investigation was not inherently prejudicial to Bartle because “[s]ocial workers do custody studies every day and make recommendations to the court, and the fact that there was a social worker involved in making some kind of a custody investigation would not have any bearing on whether or not there was some kind

of improper activity.” Further, the trial court concluded that this evidence demonstrated proof of Bartle’s knowledge that he was not merely assisting his girlfriend in obtaining her child, but doing so in violation of a custody order.

We conclude that the trial court did not erroneously exercise its discretion when it ruled that the social worker’s testimony regarding her investigation and the no-contact order constituted proof of Bartle’s knowledge that he was violating a court order.<sup>1</sup> Bartle’s knowledge rebutted the defense that he was unaware of the impropriety of his conduct. We also conclude that the trial court’s explanation that the testimony was relevant and not unfairly prejudicial was a proper exercise of the court’s discretion.

Bartle unsuccessfully pursued this issue in mistrial and postconviction motions. Because we conclude that the trial court properly exercised its discretion under § 904.04(2), STATS., when it admitted the social worker’s testimony as proof of Bartle’s knowledge that he had violated court orders, we necessarily conclude that the trial court also exercised its discretion when it denied Bartle’s motions for a mistrial and for postconviction relief on this same basis.

Bartle also contends that he is entitled to resentencing because the trial court violated *State v. Walker*. 117 Wis.2d at 586, 345 N.W.2d at 416. We disagree.

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<sup>1</sup> The trial court expressly precluded evidence on why this order had been entered, and it precluded evidence of Bartle’s prior conviction for sexual assault.

*Walker* directed the sentencing court:

First to determine and impose an appropriate sentence independently of any time previously served. Only then should time served be determined and become relevant to the final sentence imposed on the conviction. The time previously served should not be a factor in the exercise of sentencing discretion because such credit is a constitutional right of the defendant which exists independently of what the trial judge determines to be appropriate punishment for a given offense.

*See id.*

The trial court began with an inquiry on the amount of sentence credit to which Bartle was entitled. Neither party objected, but agreed that Bartle was entitled to 113 days sentence credit. The trial court then entertained sentencing evidence and arguments. At the conclusion of counsels' arguments, the trial court explained the sentencing factors and applied Bartle's circumstances to those factors and imposed a ten-year sentence on the interference conviction and a ninety-day sentence for the restraining order violation. The trial court further explained that it imposed these sentences concurrently because "[t]hese were two offenses that grew out of exactly the same factual situation."

By postconviction motion, Bartle contended that the sentencing procedure violated *Walker*. The trial court disagreed because *Walker* does not preclude an inquiry on the amount of sentence credit. The trial court explained:

What would be improper [under *Walker*] would be if the court attempted to impose a sentence which was more severe than would otherwise have been given, so as to deprive [Bartle] of the credit, that sentence credit, and the court certainly didn't do that in this case. Mr. Bartle was given a sentence that this court believed was appropriate and then he was given [sentence] credit ....

We conclude that the court's postconviction explanation of the sentence is consistent with the record established at sentencing. *See State v. Wuensch*, 69 Wis.2d 467, 480, 230 N.W.2d 665, 672-73 (1975). *Walker* precludes the trial court from imposing a harsher sentence to effectively deprive a defendant of sentence credit to which he or she is entitled. However, there is nothing in this record to persuade us that a routine inquiry into the amount of sentence credit prior to the imposition of sentence was improper, strictly because the inquiry preceded the imposition of sentence.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

